HON'BLE SRI JUSTICE B.PRAKASH RAO
And
HON'BLE SRI JUSTICE M. VENKATESWARA REDDY

W.P.No.15858 of 2000

Dated 30th day of April, 2007

Between:

Mohd. Aitheshamuddin
and three others ..
Petitioners

And

The Special Court under A.P.
Land Grabbing (Prohibition) Act
B.R.K.R. Bhavan, Tank Bund,
Hyderabad
and five others ..
Respondents

O R D E R: (Per BPR,J)

The petitioners herein, who are declared to be the land grabbers, filed this writ petition assailing the judgment dated 17.7.2000 in L.G.C. No.162 of 1996 on the file of the Special Court Under A.P. Land Grabbing (Prohibition) Act, Hyderabad, by which, the application filed by the respondents 2 to 6 herein under Section 8(1) of the A.P. Land Grabbing (Prohibition) Act, 1982 (for brevity "the Act") was allowed.

The brief facts which gave rise to the present case are that in an application filed by the respondents 2 to 6 herein before the Special Court under the Act, they sought for eviction of the petitioners herein and for payment of mesne profits in respect of the scheduled property in S.Nos.7/1 and 7/2 admeasuring 1970 square yards situated in Navarang Guda Khalasa village, Uppal, R.R. District. The property in question was originally owned by Smt.Azeezunnisa Begum. The respondents 2 and 3 are the sons and 4 to 6 and Lateefunnisa Begum are the daughters of Azeezunnisa Begum, who was the wife of Syed Mohammad, and she died on 1.1.1981. However, one of her daughters namely Lateefunnisa Begum pre-deceased her. The petitioners herein are the children of the deceased Lateefunnisa Begum. According to the respondents 2 to 6 herein (hereinafter referred to as "the applicants"), Azeezunnisa Begum made a oral gift of 30 square yards of site and structures therein to her eldest son i.e. the 1st applicant. In pursuance of which, he filed O.S.No.127 of 1991 on

the file of the Munsif Magistrate, East & North, R.R. District for recovery of possession against the petitioners 1 and 2 and the suit was decreed *ex parte*. The petition filed by the petitioners 1 and 2 to set aside the *ex parte* decree along with an application to condone the delay in filling the petition under Section 5 of the Limitation Act was dismissed on 5.10.1992 and the same was confirmed by this Court in C.R.P.No.3712 of 1992 on 22.4.1993. Even the approach made by them to the Supreme Court vide S.L.P.No.18964 of 1993 resulted in dismissal on 28.11.1994. Therefore, according to the applicants, the decree in O.S.No.127 of 1991 was final, conclusive and binding against the petitioners 1 and 2. Further, after exclusion of the aforesaid 30 square yards the rest of the area i.e. 16,698 square yards owned by late Azeezunnisa Begum was termed as Matruka property which was inherited by the applicants. Since Lateefunnisa Begum, who is the mother of the petitioners herein, died, the petitioners are excluded from claiming any succession or share in the Matruka. Therefore, the applicants have succeeded to the rest of the property as absolute owners and possessors. Of the extent of an area of 16,698 square yards the 1st applicant sold away 14,698 square yards to various persons and the remaining 1970 square yards is the schedule land. As the petitioners obstructed delivery of possession, the applicants filed E.P.No.72 of 1992 in pursuance of the decree in O.S.No.127 of 1991. The petitioners also filed a claim petition in E.A.No.166 of 1993, but the same was dismissed on 26.8.1996. Further, the petitioners filed O.S.No.1090 of 1992 in respect of the very same land, but it was too dismissed. Therefore, having regard to these circumstances, the petitioners have grabbed the land. Hence, the application.

After following the procedure as contemplated under the provisions of the Act and obtaining the relevant report from the Mandal Revenue Officer, the petitioners filed a joint counter denying the entire claim of the applicants on the ground that late Syed Mohammad, who

is the father of the applicants and maternal grandfather of the petitioners, purchased vast extent of Ac.35.00 cents in S.Nos.4 to 12 of Navarang Guda Khalsa Village and S.Nos.205 and 206 of Ramanthapur village. He died intestate leaving the entire such property as Matruka which remained undivided among his legal heirs. In 1983, both the petitioners and the applicants sold away Ac.35.00 cents of Matruka to one Narasimha under an agreement of sale and the sale consideration of which was shared by all them. According to the petitioners, the land in S.Nos.7/1 and 7/2 did not belong to late Azeezunnisa Begum nor did she ever purchase it, therefore, it only formed part of the Matruka left by Syed Mohammad. Thus, the alleged claim by the applicants under the oral gift or otherwise is totally false and baseless. It was further contended that when the father of the petitioners' died, their mother Lateefunnisa Begum became entitled to a specific share. After her death, the petitioners inherited the same in the Matruka property and they would be entitled to the property in their own right. It was further pointed that the 1st applicant filed O.S.No.22 of 1988 against the petitioners claiming himself to be the owner of the land and the same was dismissed on 29.8.1990. Again, he filed O.S.No.127 of 1991 and obtained *ex parte* decree only to deprive the petitioners, who are the legitimate shareholders and co-sharers. It was further specifically pointed out that in the enquiry in E.A.No.166 of 1993, the 1st applicant admitted that the properties in S.Nos.7/1 and 7/2 belong to the late Syed Mohammad and the same was devolved on the petitioners after the death of their mother. Therefore, the dispute if at all with regard to the division of Matruka belonging to Syed Mohammad would be amongst the shareholders, who are entitled to due inheritance and therefore, it is not an act of land grabbing nor this Court under the provisions of the Act has no jurisdiction to entertain any claim and the same is liable to be dismissed.

On this and other allegations as made by the respective parties, the Special Court settled the following issues:

i) *Whether the applicants have title to the application schedule property?*

ii) *Whether the respondents are in lawful possession of the application schedule property?*

iii) *Whether the respondents are land grabbers within the meaning of the provisions of Sec.2(d) and (e) of the Act, 1982?*

iv) *Whether the applicants are entitled to any compensation?*

v) *Whether the respondents are liable to be prosecuted of the offence under Sections 3 to 5 of the Act?*

Later, to substantiate the case of the applicants the Special Court examined PWs.1 and 2 and got marked Exs.A1 to A20 on behalf of the applicants and RWs.1 and 2 were examined and Exs.B1 and B2 were marked on behalf of the petitioners. On consideration of the evidence and material on record, the Special Court allowed the application *inter alia* holding that the respondents-applicants are the owners of the schedule property and the petitioners have no right title or interest to any portion of the property and their possession is not lawful, and therefore, they are land grabbers. Hence, this writ petition.

Sri P. Shiv Kumar, learned counsel for the petitioners has mainly submitted that having regard to the very case as has been set up by the respondents-applicants, there is no proper foundation laid to hold that the petitioners are the land grabbers and even otherwise the case does not come within the purview of the Special Court under the Act. Further, the respondents-applicants have hopelessly failed to make out the basic ingredients for entertaining such an application and even otherwise, having regard to the nature of dispute amongst the co-sharers and legal heirs in respect of Matruka property of Syed Mohammad, the petitioners could not have been declared as land grabbers.

Sri P. Panduranga Rao, appearing for respondents 2 to 6, who sought to sustain the findings of the Special Court and repel the aforesaid contentions, has submitted that the petitioners herein have

absolute right title and interest whatsoever of nature and it is the property of late Azeezunnisa Begum and Matruka of Syed Mohammad and the petitioners could not have created valid right, title or interest and thus, their possession is nothing but an act of land grabbing. Hence, the findings as arrived by the Special Court do not warrant any interference.

When these and other allegations are made across the bar from both sides, the point that arise for consideration is whether in the facts and circumstances, the respondents have made out any case to hold that the petitioners are land grabbers and the application filed by them and issues framed by the Special Court are maintainable?

At the outset there is no dispute in the relationship among the parties to the present proceedings. The petitioners herein are the nephews of the respondents-applicants and sons of the Lateefunnisa Begum, who was the daughter of Azeezunnisa Begum. Therefore, the ultimate question in view of the respective pleas as set out from both the parties is whether the scheduled properties are the Matruka of late Syed Mohammad as contended by the petitioners herein or that of the land belonging to Azeezunnisa Begum.

At this juncture, it is relevant to note the case as set up in the application which was filed under Section 8(1) of the Act before the Special Court and taken up in L.G.C.No.162 of 1996 in the format as set up in the concise statement, and the brief facts as mentioned therein run on the following lines:

The applicants are the sons and daughters of late Azeezunnisa Begum, who is the Pattadar of S.No.7/1 and 7/2 of Navarang Guda Khalsa village, Uppal Mandal, R.R. District. The applicant No.1 is the son of Azeezunnisa Begum, who died at Hyderabad on 1.1.1981. S.Nos.7/1 and 7/2 of Navarang Guda Khalsa village admeasuring Ac.3.18 guntas (16,698 sq. yards) is the patta lands of Azeezunnisa Begum, who gifted out the same 30 sq. yards with structures to the applicant No.1 under an oral gift. It is accepted as true by all the

applicants. Being Muslims by religion, oral gift or Hiba is permissible and to it a reference can be found in the judgment and decree in O.S.No.127 of 1991 on the file of Munsif Magistrate, East & North, R.R. District which was filed against the 1st and 2nd respondents to this petition for recovery of possession of 30 square yards of land consists of poultry farm and 5 small rooms and big well known as "Natta Bavi" forming part of S.Nos.7/1 and 7/2 of Navarang Guda Khalsa village.

To set aside the judgment and decree, respondent No.1 filed petition under Order-9, Rule-13 CPC along with Section 5 of Indian Limitation Act. Petition under Section 5 of Limitation Act bearing I.A.No.2456 of 1991 on contest and merits was dismissed by the District Munsif Magistrate, Hyderabad, East & North on 5.10.1992.

Against the said order, the respondents preferred C.R.P. bearing No.3712 of 1992 on the file of Hon'ble High Court of Andhra Pradesh which was dismissed on merits on 22.4.1993.

After the dismissal order of C.R.P. the respondents preferred Special Leave Petition bearing No.18964 of 1993 before the Hon'ble Supreme Court of India, which was dismissed at admission stage on 28.11.1994. The said orders have become final and binding on the parties. In the trial Court judgment, there was a reference to the gift. The rest of the S.Nos.7/1 and 7/2 of Navarang Guda Khalsa village is the Matruka left by Azeezunnisa Begum and inherited by the applicants. There is no *intere se* dispute between them about claiming inheritance or regarding shares to be inherited individually.

The applicants are also filing the pahanis of S.Nos.7/1 and 7/2 of Navarang Guda Khalsa village for the year 1989-90 showing their mother's name as pattadar.

Respondents who are close relatives of applicants and none other than their sister Lateefunnisa Begum's sons made attempt to encroach upon the remaining portion of S.Nos.7/1 and 7/2 by calling it as S.Nos.205 and 206 of Ramantapur village which is adjacent land. They even attempted the abuse of process of law to encroach on

S.Nos.7/1 and 7/2 of Navarang Guda Khalsa village filed claim petition bearing E.A.No.166/93 in E.P.No.72/92 in O.S.No.127/91 which was dismissed on contest by District munsif, Hyderabad, East & North on 26.8.1996. The certified copy of the above order is filed herewith. Therein, they alleged that they are the obstructionists under Order 21 Rule 97 to 103 C.P.C. The petition was dismissed as they have falsely alleged that S.Nos.7/1 and 7/2 as S.Nos.205 and 206. They even filed a suit O.S.No.1090 of 1992 stating that they are in possession of S.Nos.205 and 206 of Ramantapur village, which was dismissed. All these attempts were made with intention to grab S.Nos.7/1 and 7/2 of Navarang Guda Khalsa under the guise of S.Nos.205 and 206 of Ramantapur village which is the village different than Navarang Guda Khalsa village.

The respondents also cannot inherit the property of late Azeezunnisa Begum, the mother of the respondents, as they are Mehroom-ul-wirs. The daughter of Lateefunnisa Begum pre-deceased the mother of Azeezunnisa Begum and this deprived the respondents of the inheritance out of the estate left by Azeezunnisa Begum.

After the dismissal of E.A.No.166 of 1993 the respondents encroached on S.Nos.7/1 and 7/2 bounded by

East: Portion of S.Nos.7/1 and 7/2 of Navarang Guda Khalsa Village and thereafter boundary of Rahmatpur village also known as Ramanthapur.

West: Boundary of Ramantapur village also known as Rahmatpur village

North: Boundary of Ramantapur village also known as Rahmatpur

South: S.No.6 of Navarang Guda Khalsa village admeasuring 1970 square yards and occupied it. The said survey numbers are created by doing phodi of S.Nos.7 of Navarang Guda Khalsa village and thereafter S.Nos.7/1 and 7/2 were created.

The applicants submit that the total extent of S.Nos.7/1 and 7/2 individually is as follows:

S.No.7/1 - Ac.3.17 guntas
S.No.7/2 - Ac.0.01 guntas

And a total of it comes to Ac.3.18 guntas which is equal to 16,698 sq. yards.

Out of it 30 sq. yards of land consisting of a poultry farm, 5 small rooms and a big “well” known as “Navta Bavi” is decreed by the Court of Munsif Magistrate, Hyderabad East & North, R.R. District in favour of applicant No.1 and an extent of 14,698 square yards is sold by the applicant No.1 to others and that much of land which is sold to others is utilized for construction of houses whose Municipal numbers are as follows and they occupy to the extent of 14,698 sq. yards.

i) H.No.3-14-36/8/2
ii) H.No.3-14-36/11
iii) H.No.3-14-36/10/6
iv) H.No.3-14-36/11/6
v) H.No.3-14-36/9/6
vi) H.No.3-14-36/10
vii) H.No.3-14-36/10/8/4
viii) H.No.3-14-36/8/10/1
ix) H.No.3-14-36/8/10/2A
x) H.No.3-14-36/8/10/2/B
xi) H.No.3-14-36/10
xii) H.No.3-14-36/10/1
xiii) H.No.3-14-36/8/11
xiv) H.No.3-14-36/8/9
xv) H.No.3-14-36/8/9
xvi) H.No.3-14-36/8/8/A
xvii) *H.No.3-14-36/8/8/B*

After deducting the same and deducting 30 square yards of the land decreed in favour of the petitioner No.1 in O.S.No.127 of 1991, an extent of 1970 square yards of land out of S.Nos.7/1 and 7/2 is encroached by the respondents on 9.9.1996 and the same is being claimed.

It is the above version as set out by the respondents which is being contested by the petitioners herein in their counter to the aforesaid case. To the effect, and in short, on the specific version, the entire schedule properties along with other properties in S.Nos.4 to 12 of the said village and S.Nos.205 and 206 of Ramanthapur village are

Matruka of late Syed Mohammad, who died intestate. Whereas on the reading of the aforesaid brief facts and concise statement made out by the respondents-applicants, except asserting that it is the property of the Azeezunnisa Begum no other particulars are forthcoming. Further, even on a reading of the aforesaid contents as extracted the above, there is a clear and staring absence of specific case or allegations of possession and dispossession which is a relevant ingredient for making claim of right over the schedule properties. Nowhere, it is stated that the respondents were in possession at any point of time and they were dispossessed by the petitioners herein and if so at what point of time and on what date. The cause of action, which necessarily has to arise on the basis of such allegation of existence of possession and later dispossession is totally absent in the present case. Further, there is also no averment as to how the respondents-applicants came into possession. Except finding out of their case and trying to raise their claim as if a regular claim is set up in normal course, no Common Law for a comprehensive nature of relief is sought for. Even a bare reading of the entire allegations do not indicate as to how the petitioners can be called land grabbers. It is a clear case where there is a dispute in regard to the succession amongst the co-sharers. Matruka property was left by Azeezunnisa Begum whose report also needs to be gone into in a proper regular course, and the fact remains that the petitioners herein are in possession admittedly in respect of the schedule property. The respondents have not come out with any specific case as to what and for how long the petitioners were in possession. Even prior to the record as submitted by both sides, it clearly shows that the possession quite sufficiently dates back to much a longer period than what is now sought to be projected. Even the aforesaid allegation in the application does not indicate that the possession and dispossession of the petitioners were in recent past so as to constitute the act of possession and dispossession for approaching the Special Court on the allegations of land grabbing.

In view of the aforesaid reasons as pointed out it is a clear case where in fact the respondents-applicants, instead of approaching the Common Law Court for a normal relief in the normal way as available to them under law, they have chosen to approach the Special Court under the provisions of the Act which is wholly on the face of it unsustainable and the very application is not maintainable. As already stated, larger questions are involved having regard to the nature of dispute between these two set of heirs in the same family in regard to the Matruka either belonging to Syed Mohammad or Azeezunnisa Begum apart from the shares which one would be entitled to under the personal law. Virtually, the present claim proceeds as if the petitioners herein are totally strangers, third parties having absolutely no claim or right, title or interest whatsoever in nature, which on the face of it, does not appear to be so. Therefore, the entire exercise done by the Special Court by going into all these questions and holding that the petitioners are the land grabbers is wholly unsustainable and totally an erroneous approach has been made. The present application filed by the respondents has been treated as if it is a regular suit and the serious disputed questions are sought to be enquired into which is in the teeth of the very narrowed jurisdiction as provided for under the Act.

In **M. Yadagiri Reddy Vs. V.C. Brahmanna**[1] the Division Bench of this Court, considering the definition of Land Grabbing Act as contemplated under Section 2(d) and (e) has held to the following extent.

> *"Under the provisions of the Act, it would be enough, if it is prima facie proved the land alleged to have been grabbed to be the land owned by the Government or by a private person and the burden of proving that the land has not been grabbed casts upon that person who is alleged to have grabbed the land. The Special Court shall presume that the person who is alleged to have grabbed the land is a land grabber.*
>
> *In order to make out a case in a civil case that one is a land grabber, the person invoking the jurisdiction of the Special*

Court must specifically aver and prove both the ingredients the factum as well as the intention that one falls in the categories of the persons mentioned in clause (d) of Section 2 of the Act and he has occupied the land in dispute, which belonged to the applicant, without any lawful entitlement and with a view to or with the intention of illegally taking possession of such land or entering into the land for any of the purposes mentioned in clause (e) of Section.2

Merely not being entitled to get the possession itself is not enough to hold a person to be a land grabber unless the possession was taken with an intention to enter into possession illegally. The mere fact of legally not entitled to the possession would not fulfil the ingredients of the definition "land grabber" and "land grabbing". Mere fact that one is not lawfully entitled to enter into possession would not be enough to characterize one to be a land grabber and such entry does not amount to land grabbing unless possession is illegally taken with that view in mind. The person taking possession must know that he is acting illegally while taking possession of the land."

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Similarly, in **State of Andhra Pradesh Vs. Pramila Modi and Others**[2] the Division Bench of this Court considering the very same definition of land grabbing held as follows:

"No allegation of illegal or unauthorized occupation of land by respondent – Title of respondent to disputed land recognized by Surfekhas authorities as early as in 1356 fasli by issuing supplementary sethwar by incorporating respondent's name as "pattadar" in respect of land measuring Ac.3.27 gts in S.Nos.116/2 and 116/3 – Board of Revenue confirmed orders of Director of Settlements and Government confirmed orders of Board of Revenue – All these orders speak about possession and enjoyment of respondent over disputed land – Though no entries in revenue records but order passed by quasi-judicial authorities to which revenue administration was party – Respondent cannot be said to be land grabber – Assertion of one's title and possession over land whether sustainable or not will not amount to any act of land grabbing unless it is established that possession was taken illegally."

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Similar is the principle which has been reiterated by the Apex Court in

a decision reported in 2004(7) SCC 398.

From the aforesaid principles as laid down and even on a bare reading of the provisions of the aforesaid definition as contemplated under the scope as can be ventilated, necessarily it would not take any such a comprehensive regular relief in the nature which has been sought to be invoked in the present case. Therefore, in view of the aforesaid *prima facie* view which we are taking in this case that no case has been made out to warrant invocation of the jurisdiction of the Special Court under the Land Grabbing Act, we are refraining to go into the merits of the case to appreciate the evidence both oral and documentary which has been let in on either side as it is not necessary to go into the same. Unless it would not fall well within the competence of the Special Court to go into such questions or to give any such conclusion, it is not a case where the clear-cut finding has been arrived at within the ambit of land grabbing as provided under the Act and therefore, it cannot be said that this Court can venture to interdict any such finding. However, it is a clear case that the respondents have tried to work in into a very narrowed arena where such relief could not be entertained instead of approaching the regular Courts for any relief they are entitled to under law.

In the circumstances, we hold that the respondents-applicants have totally failed to make out even from the very application as the case is set up to hold that the petitioners are land grabbers.

In the result, the writ petition is allowed and the judgment dated 17.7.2000 delivered in L.G.C.No.162 of 1996 by the Special Court under A.P. Land Grabbing (Prohibition) Act is set aside. It is needless to mention that it is always open for the respondents to approach the regular Court for any appropriate relief to which they would be entitled under the law and the same can be decided on merits in accordance with law unaffected and uninfluenced by any of the findings recorded in this writ petition. No costs.

(B. PRAKASH RAO, J)

30th April, 2007
bcj

(M. VENKATESWARA REDDY, J)

[1] 2005(1) ALT 56(D.B.)

[2] 2005 (4) ALD 105 (D.B.)